

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0083
Income Tax Withholding
For the Years 1999, 2000, and 2001

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ISSUE

Income Tax Withholding—Distributions to non-resident shareholders

Authority: IC 6-8.1-5-1(b); IC 6-3-4-13.

Taxpayer protests the assessment of income tax that it was required to have withheld from a distribution to a non-resident shareholder.

STATEMENT OF FACTS

Taxpayer is an Indiana S-corporation with 10 shareholders, 3 of whom are out-of-state residents. An audit examination revealed that no withholding income tax was being withheld on the non-resident shareholders' distributions. Audit assessed the S-corporation with the withholding income tax due on the non-resident shareholders' distributions.

Taxpayer filed a protest to the assessment. A hearing date was set for February 22, 2005. Taxpayer did not appear for the hearing. This letter of findings is written based upon the information available within the file.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-4-13 requires an S-corporation to withhold Indiana income tax on distributions made to non-resident shareholders. Under the statute, the corporation is liable to the State of Indiana for the amount of income tax that the corporation is required to withhold. *Id.* The withholding of the income tax by the corporation does not relieve a shareholder of the obligation to file an Indiana income tax return. *Id.* But if a corporation fails to withhold and pay to the state of Indiana any amount of tax required to be withheld—and the tax is paid by the shareholder, that amount of tax paid by the shareholder shall not be collected from the corporation; but the corporation shall not be relieved from liability for interest and penalties due, caused by the corporation's failure to withhold the tax due. *Id.* In this instant case, the out-of-state shareholder has not filed an Indiana income tax return since 1996. Because the S-corporation had a duty to withhold and submit the income tax due on a non-resident

distribution and because the non-resident has not filed an income tax return, Taxpayer is not relieved of the tax liability; the income tax that should have been withheld by the S-corporation Taxpayer is to be paid to the Department by S-corporation Taxpayer—including interest and penalties.

The fact that an R&D credit was available to be claimed does not abrogate the duty of the S-corporation to have withheld the income tax due on the non-resident shareholder's distribution and to have submitted the tax to the State of Indiana.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

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